IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:- 29.08.2007

Coram

The Honourable Mr. Justice M. CHOCKALINGAM

W.P. Nos.45751 to 45754 of 2006
and
M.P. Nos.2+2+2+2 and 3+3+3+3 of 2007

C. Kamakala ... Petitioner in W.P.No.45751/2006

Jayalakshmi Natarajan ... Petitioner in W.P.No.45752/2006

Usharani Natarajan ... Petitioner in W.P.No.45753/2006

K. Malathi ... Petitioner in W.P. No.45754/2006

..vs..

1. The Chairman and Managing
Director,
Bharat Sanchar Nigam Ltd.,
B.201, Statesman House,
New Delhi - 110 001.

2. Assistant Director General
(Training Finance),
Bharat Sanchar Nigam Ltd.,
Training Finance Section,
B.201, Statesman House,
New Delhi - 110 001.

3. The Chief General Manager,
Bharat Sanchar Nigam Ltd.,
Chennai Telephones,
No.78, Purasawalkam High Road,
Chennai - 600 078.

4. The Chief Accounts Officer
(Finance Coordination),
Bharat Sanchar Nigam Ltd.,
Chennai Telephones,
78, Purasawalkam High Road,
Chennai - 600 078.

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5. The Deputy General Manager
(Admn.),
Bharat Sanchar Nigam Ltd.,
Chennai Telephones,
No.89, Millers Road,
Chennai - 600 010.

6. Mrs. Lalitha Ravi,
Junior Accounts Officer (TR) Central,
O/o. Deputy General Manager,
Chennai Telephones,
146, Greams Road,
Chennai - 600 006.

7. Mrs. Hemalatha Umesh Naig,
Junior Accounts Officer (TR),
South West, Chennai Telephones,
Panagal Buildings,
Saidapet, Chennai - 600 015. ... Respondents in all W.Ps.

Petitions under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus, to call for the records pertaining to the proceedings of the second respondent bearing F.No.29-5/2006 (Trg.Fin.) dated 1.11.2006 and quash the same insofar as it relates to inclusion of the names of 6th and 7th respondents and consequently direct respondents 2 and 5(W.P. Nos.45751 and 45752 of 2006) and respondents 1 and 2 (W.P. Nos.45753 and 45754 of 2006) to include the names of the petitioners in the JAO's Induction Training Phase - 1 (4 weeks) scheduled to commence from 13.11.2006 and on subsequent dates.

For Petitioner : Mr. V. Kalyanaraman

For Respondents : Mr. S. Udayakumar,
S.C.G.S.C.

COMMON ORDER

The present writ petitions have been brought forth by the petitioners seeking to issue a writ of certiorarified mandamus, to call for the records pertaining to the proceedings of the second respondent bearing F.No.29-5/2006 (Trg.Fin.) dated 1.11.2006 and quash the same insofar as it relates to inclusion of names of 6th and 7th respondents and consequently direct respondents 2 and 5 (W.P. Nos.45751 and 45752 of 2006) and respondents 1 and 2 (W.P. Nos.45753 and 45754 of 2006) to include the names of the petitioners in JAO's Induction Training Phase - 1 (4 weeks).

2. Affidavits filed in support of the writ petitions are perused. The Court heard the learned counsel appearing on either side.

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3. The case of the petitioners in short is that they were originally appointed as Telegraph Assistants and they were working as Junior Accounts Officer (Officiating) in the respondent-Company. Those persons, who have completed three years of service in class III posts, are eligible to write the departmental examination for being considered for promotion to the post of Junior Accounts Officer. The petitioners wrote the departmental examination for Junior Accounts Officers Part – I and passed the said examination and thereby became eligible for writing Part II examinations. The departmental examination for Junior Accounts Officer, Part II was held from 27.3.2006 to 29.3.2006. All these petitioners wrote the examination. Along with these petitioners, five others also wrote the examination. The results were declared with regard to third and fourth respondents only in May, 2006 who became qualified in Junior Accounts Officer Part II examination, but the results of the petitioners were not declared. Following the representations made by the petitioners, the results were announced that the petitioners also qualified in Part II examination.

4. After passing examination in Part II, induction training was to be imparted. In order to fix the inter se seniority of the Junior Accounts Officers, the said training program was held in three phases. While the first phase training was for a period of four weeks, the second and third phase training was also for equal time. The petitioners were under the impression that they would also be sent for induction training Phase – 1. But when the impugned proceedings were issued on 1.11.2006 announcing the candidates, the names of 6th and 7th respondents were included, but not that of the petitioners. Under such circumstances, a representation was also given to the General Manager(O) of the respondent herein, but the same was not yet considered. Hence the proceedings, which is the subject matter of challenge in these writ petitions, issued by the second respondent is arbitrary and unreasonable and it has got to be quashed.

5. Learned counsel appearing for the petitioners would submit that it is not in controversy that all the petitioners have passed Part I of the examination and only on getting qualification, they were allowed to write Part II examination, which took place from 27.3.2006 to 29.3.2006. The results were originally not announced and subsequent to the representation, it was announced. In the list of induction training program, though their names were not included, the names of sixth and seventh respondents were included. Challenging the same, the present writ petitions have been filed.

6. In answer to the above, learned counsel appearing for BSNL relied on Junior Accounts Officer Recruitment Rules, 2001 (hereinafter referred to as "Rules") and submitted that the appointments for Junior Accounts Officer could be made only according to their ranks obtained by them in the list of qualified candidates. 50% of the vacant posts in the circle by direct recruitment through open competitive examination and 40%

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of the vacant posts in the Circle by promotion from the employees working in BSNL through internal competitive examination and 10% of the vacant posts in the circle by promotion from Senior Accountants working in BSNL through internal competitive examination. As per the Rules, it was only competitive examination.

7. Apart from these petitioners, three others also wrote examination, who are respondents 5 to 7. Insofar as fifth respondent is concerned, he fell under the category of 10% through internal competitive examination. These petitioners fell in the category of 40% of the vacant posts in the Circle by promotion from the employees working in BSNL through internal competitive examination. As per the Rules, it was only competitive examination. The tabular column clearly indicates that respondents 6 and 7 got more marks than these petitioners in the examination. Only three vacancies were available at the time of filling of vacancies. The remaining vacancies, except 10% category, have to be filled up by respondents 6 and 7, since they got more marks than these petitioners and thus, no more vacancy was available. The vacancies were filled up after following the Rules strictly. Apart from this, it is the competitive examination. Hence the writ petitions have got to be dismissed.

8. It is brought to the notice of this Court that insofar as petitioners in W.P. Nos.45752 to 45754 of 2006 are concerned, they have passed Part II examination and petitioner in W.P. No.45751 of 2006 is concerned, he has also passed the examination by awarding grace marks by mistake.

9. The Court paid its anxious consideration on the submissions made by either side. It is not in controversy that these petitioners, who passed Part I of examination, were allowed to write the examination of Part II, which took place from 27.3.2006 to 29.3.2006. It is also not in controversy that originally the results of these petitioners were not declared. After submitting representation only, the results of the petitioners were declared. Thereafter, BSNL came forward to submit that petitioners in W.P. Nos.45752 to 45754 of 2006 have passed the examination and petitioner in W.P. No.45751 of 2006 has also passed the examination by awarding grace marks by mistake. The said contention cannot be countenanced and the BSNL cannot be permitted to say that the petitioner in W.P. No.45751 of 2006 has not passed the examination.

10. The question is whether the deletion of these petitioners and inclusion of respondents 6 and 7 is proper or not, for which, the contention of petitioners' side is that it is the departmental examination and not competitive examination. Under the circumstances, once they have passed the examination, they should be sent for training. But, BSNL came forward to say that as per the Rules, it was not competitive examination. The Court has to find out the examination conducted was departmental as contended by the petitioners or competitive as put forth by the respondents. After going through the materials placed before this Court,

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it is quite evident that the examination was only competitive. As per the Rules, which came into force on 31.8.2001, the examination was only competitive. For reference Rule 13 of the Rules reads as follows:-

> " 13. Certain categories of persons eligible for appointment as Junior Accounts Officers in the Bharat Sanchar Nigam ltd.: Persons of the Deptt. Of Telecommunication/Deptt. Of Telecom Services/Deptt. of Telecom Operations who have passed Part-I and Part-II of the Examination conducted by the Department of Telecom/DTS/DTO and have not been appointed as Junior Accounts Officers before the notified date, shall after such date be appointed as Junior Accounts Officers in BSNL, according to the ranks obtained by them in the list of qualified candidates."

11. From the above, it would be quite clear that the persons have got to be appointed according to their ranks obtained in the list of qualified candidates. Further, it could be well seen from the Schedule that the period of probation was two years. As per Clause (A) of Schedule, 50% of the vacant posts in the circle by direct recruitment through open competitive examination and 40% of the vacant posts in the Circle by promotion from the employees working in BSNL through internal competitive examination and 10% of the vacant posts in the circle by promotion from Senior Accountants working in BSNL through internal competitive examination.

12. From the above, it is quite clear that all the three categories have to be filled in only by the competitive examination. Thus, it is no doubt that even though the petitioners fell in the category of 40%, the vacancy was only three. As could be seen from the available material, it is clear that out of total persons, who wrote the examination, three could be appointed and fifth respondent was to be appointed since he fell under 10% of the vacant posts from the persons to be promoted from Senior Accountants working in BSNL. Then, only two posts to be filed in by B.S.N.L. From the tabular as to the marks secured in the competitive examination, it could be seen that respondents 6 and 7 secured more marks than the petitioners. Hence, as per the Rules, respondents 6 and 7 have to be appointed, which has been done accordingly.

13. Now the learned counsel for the petitioners took the Court that in all the communications, nowhere it is found it was a competitive examination, but only in respect of 10% vacancy it is found that it was competitive examination. It is true that the competitive examination is not found in the communications. Even then, the Court is of the considered opinion that once appointment to the post of Junior Accounts Officers was to be done, it has got to be done strictly in accordance with the Rules framed. In the instant case, the Rules framed in 2001. Once

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the examination has been conducted pursuant to the Rules, which already come into force in August, 2001, it cannot be said that any deviation is made. Merely because at the time of examination, it was not declared or it was not stated that the examination was either competitive or departmental, that did not mean that the Rules were not followed. Following the Rules only, the examination was conducted. If the contention put forth by the learned counsel for the petitioners has got to be accepted, it is nothing but permitting the respondents to go by breaching the Rules already in force, which cannot be done.

14. Further in the instant case, learned counsel brought to the notice of this Court, subsequently examination for Part I has been conducted. If there is no vacancy, no need to conduct Part I examination, for which, learned counsel for BSNL would submit that the vacancies have got to be found out through different States. What is actually found is Tamil Nadu circle. After making Notification, procedural formalities have to be followed. Hence the case of the petitioners cannot be considered.

15. Now at this juncture, it is pertinent to point out that though these petitioners were originally declared as passed in examination Part II, applying the Rules, respondents 6 and 7, who have come under 40% category and got more marks than these petitioners and fifth respondent who has come under 10% category, have been appointed by filling up three vacancies as per the Rules.

16. Under the circumstances, the Court is unable to notice any merit or accept anyone of the contentions of the writ petitioners. Hence the writ petitions are dismissed. Consequently, the connected M.Ps. are also dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ssa.

To

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Director,
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Chennai - 600 006.

7. The Junior Accounts Officer (TR),
South West, Chennai Telephones,
Panagal Buildings,
Saidapet, Chennai - 600 015.

1 CC To Mr.S.Udayakumar, Sr.CGSC, SR NO.54068.
4 CC To M/s.Aiyar & Dolia, Advocate, SR NO.53826.

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